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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,303	10/04/2006	Mario Leclerc	BRKP:012US/10602032	3382
33425 7590 08/19/2010 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER YOUNG, SHAWQUITA				
ART UNIT 1626		PAPER NUMBER		
NOTIFICATION DATE 08/19/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

aopatent@fulbright.com

### Office Action Summary

**Application No.**

10/568,303

**Applicant(s)**

LECLERC ET AL.

**Examiner**

SHAWQUA YOUNG

**Art Unit**

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 75-85 and 98-106 is/are pending in the application.
- 4a) Of the above claim(s) 98-102 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 106 is/are allowed.
- 6) ☒ Claim(s) 75-78,80,81,83,84 and 103-105 is/are rejected.
- 7) ☒ Claim(s) 79, 82 and 85 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 75-85 and 98-106 are currently pending in the instant application. Applicants have added new claim 106 in an amendment filed on June 1, 2010. Claims 75-78, 80, 81, 83, 84 and 103-105 are rejected, claims 79, 82 and 85 are objected, claim 106 is considered allowable and claims 98-102 are withdrawn from consideration in this Office Action.

#### **I. *Response to Arguments***

The examiner has withdrawn the indication that claims 103-105 should be renumbered as claims 140-142.

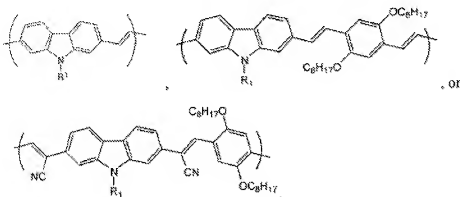
Applicant's arguments, filed June 1, 2010 with respect to the rejection of claims 75-78, 80, 81, 83, 84 and 103-105 under 35 USC 112, first paragraph as containing new matter and the rejection of claims 75-78, 80, 81, 83, 84 and 103-105 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention have been fully considered but is only partially persuasive.

Applicants argue that there is support for "homopolymers" as opposed to polymers generally since the inserted structures derive from identical disclosure in original claims 76, 80 and 83. Applicants argue that the definition of polymers in the specification, provided at paragraph [0057], states that the polymers may comprise different monomers and that "May" clearly indicates this is an optional embodiment, thus contemplating that the polymers may also not comprise different monomers,

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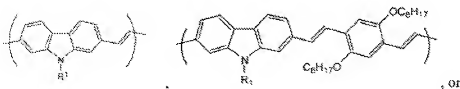
namely, they may comprise the same monomers. Applicants further argue that the specification clearly contemplates both homopolymers or heteropolymers.

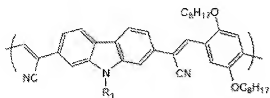
However, the Examiner wants to point out that the new matter rejection is not based on "homopolymer" vs. "heteropolymer" but discussed that Applicants have not provided support for a homopolymer of the structures added in the limitation "wherein the polymer comprising repeating monomers consisting of the following structure:



Applicants have selected the above

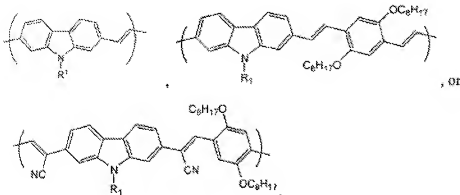
homopolymers as their claimed invention without any support in the specification showing that the above homopolymers have been prepared and intended as the claimed invention. Applicants argue that the inserted structures derive from identical disclosure in original claims 76, 80 and 83 however in the original claims 76, 80 and 83, the limitation was not specifically drawn to a homopolymer of the structure





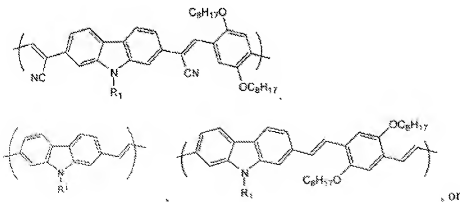
but was drawn to a polymer as defined in

claim 75, comprising monomeric groups of the formula



(See the claims filed on June 4, 2008). The

Examiner wants to emphasize that the specification does not provide support showing that the added monomeric groups were prepared and obtained specifically as homopolymers. Therefore, Applicants can not randomly select monomers of the formula



from the originally

filed disclosure and claim specific homopolymers without any guidance or support from

the specification showing that the above homopolymers were the intended invention that was possessed by Applicants at the time of filing. Therefore, the Examiner has maintained the new matter rejection.

Applicants' arguments relating to the pending 112, second paragraph has been persuasive and is withdrawn.

## **II. Rejection(s)**

### ***Claim Rejections - 35 USC § 112, 1<sup>st</sup> paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 75-78, 80, 81, 83, 84 and 103-105 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have added the following limitation "wherein the polymer is a homopolymer comprising repeating monomers consisting of the following structure....." in claim 75 but this limitation is not disclosed in the original specification and is considered new matter because the amendment introduces subject matter that is not supported by the original disclosure. The original specification does not disclose homopolymers which comprise

repeating monomers selected from the structures in claim 75. Applicants are suggested to delete the added above limitation which is considered new matter.

### **III. Objection**

#### **Dependent Claim Objections**

Dependent Claims 79, 82 and 85 are objected to as being dependent upon a rejected based claim. To overcome this objection, Applicant should rewrite said claims in an independent form and include the limitations of the base claim and any intervening claim.

### **IV. Conclusion**

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawquia Young whose telephone number is 571-272-9043. The examiner can normally be reached on 7:00 AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Shawquia Young/

Examiner, Art Unit 1626

/Rebecca L Anderson/

Primary Examiner, Art Unit 1626